

Based upon the entire record and for purposes of preliminary hearing, the Appeals Board finds as follows:

(1) This matter came before the Administrative Law Judge on a Form E-3 Application for Preliminary Hearing filed by the claimant requesting medical treatment. This is a post-award request from an Award entered by Administrative Law Judge Steven J. Howard on July 25, 1984. Contained in this Award was the finding that future medical was to be provided upon proper application and continuing conservative care for the claimant's injury be provided by Doctors Garcia and/or Pollock, as needed.

The Administrative Law Judge, in her Preliminary Order dated October 7, 1994, granted the claimant's request for medical treatment with Dr. Pollock for a period of six (6) months. No witnesses testified at the Preliminary Hearing and the only evidence introduced was Dr. Pollock's medical records which contained his examination of the claimant on June 14, 1994. The parties stipulated that a prior transcript of a Preliminary Hearing held June 9, 1992 and Administrative Law Judge John D. Clark's Order of June 9, 1992, should be included as part of the record in this case. Judge Clark's Order of June 9, 1992, granted claimant's request for medical treatment with Dr. Jon McMillan.

Even though this is a post-award request for benefits, the claimant has brought this request pursuant to the preliminary hearing procedures set forth in K.S.A. 44-534a. Therefore, in order for the Appeals Board to have jurisdiction to review this Order, the respondent has to allege that the Administrative Law Judge either exceeded his jurisdiction or a jurisdictional issue enumerated in K.S.A. 44-534a(a)(2) has to be raised. Respondent argues that claimant's request for medical treatment is not a natural consequence of the original injury but is a result of intervening causes. As such, the Appeals Board has jurisdiction to review this Preliminary Hearing Order because the issue of whether the claimant's accidental injury arose out of and in the course of his employment is an issue specifically enumerated as jurisdictional in K.S.A. 44-534a(a)(2).

The claimant first requested future medical treatment in a Preliminary Hearing held on June 9, 1992 before Administrative Law Judge John D. Clark. In that Preliminary Hearing, the respondent also argued that the claimant's request for medical treatment was not a natural consequence of the original injury but was the result of intervening causes. Administrative Law Judge John D. Clark, in an Order dated June 9, 1992, rejected the respondent's argument and ordered medical treatment.

In the present Preliminary Hearing, respondent failed to introduce new evidence in reference to the intervening cause issue. Therefore, it is the finding of the Appeals Board that the intervening cause issue was previously litigated and found not to be the reason for claimant's request for medical treatment. As no new evidence has been introduced, the Administrative Law Judge's decision that claimant's present injury is related to his original injury is affirmed.

(2) The respondent also contends that the Administrative Law Judge exceeded her jurisdiction in granting claimant's request for medical treatment because the medical evidence did not support the request. K.S.A. 44-534a(a)(2) authorizes the Administrative Law Judge to make a preliminary finding in regard to medical compensation. Accordingly, the Appeals Board finds that it does not have jurisdiction to review this issue as the Administrative Law Judge did not exceed her jurisdiction and the issue is not one that is enumerated in K.S.A. 44-534(a)(2) which gives the Appeals Board jurisdiction to review a preliminary hearing order.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Nelsonna Potts Barnes, dated October 7, 1994, granting claimant's request for medical treatment, is affirmed and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February, 1995.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: Terry J. Malone, Attorney at Law, Dodge City, KS  
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Cortland Q. Clotfelter, Attorney at Law, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
George Gomez, Director